IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3025 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVKUMAR BALUMAL MOTIYANI

Versus

ASSTT.COLLECTOR CUM MANAGING DIRECTOR

Appearance:

MR P.M. BHATT for MS RUKSANA M SHAIKH for Petitioners

MR HC PATEL, AGP for Respondents No. 1 to 3.

DS AFF.NOT FILED (R) for Respondent No. 4

MR PRANAV G DESAI for Respondent No. 5

MR NIRAV C THAKKAR for Respondent No. 9

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 09/03/2001

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the order dated 23-3-1999 passed by the Managing Officer and Assistant Collector, Vadodara in the

case bearing No. R.M.B. Vashi/362/98.

2. Learned Assistant Government Pleader states that the land in question was given to the respondent no. 6 Amardas Topandas Golani for his rehabilitation. According to the learned counsel for the petitioner, the land in question belongs to the respondents no. 6, 7 and 8 and they have transferred the land to the respondent no. 9 who constructed various flats and shops after obtaining necessary statutory permission from the competent authority concerned. The petitioners no. 1 to 9 purchased the flats and shops for consideration and the remaining petitioners have purchased the flats/shops on the basis of the agreement and possession of the respective flats/shops was given to the petitioners by the respondent no. 9 after payment of almost entire consideration.

3. On 8-4-1999 some Revenue Officer visited the disputed site under the instructions of the Assistant Collector, Vadodara which is known as T-31-31, T-52 and T-45 namely city survey No. 4816, 4581 and 4188 of Revenue Survey No. 817 of Varasia area of Vadodara. The Revenue Officer concerned affixed the public notice on the said properties threatening the petitioners and other occupants not to deal with the properties as the properties has already been confiscated to the State Government as per the impugned order of the Assistant Collector dated 23-3-1999. The news was also published in the daily newspaper "Gujarat Samachar".

4. The contention of the learned counsel for the petitioner is that the petitioners are in actual possession of the properties constructed on the land in dispute by the respondent no. 9 after obtaining statutory permission from the concerned authority. The petitioners have not been given any notice nor any opportunity of being heard was afforded to the petitioners before passing the impugned order wherein it is stated that since there is breach of condition of no. 3 of the orders mentioned in preambles No. 1, 2 and 3 of the impugned order. On account of breach of the conditions, the land described in para 1, 2 and 3 together with the construction made thereon were ordered to be confiscated to the State Government is free from all encumbrances. That order was challenged before this Court by way of filing Special Civil Application No. 6700/98 and this Court has quashed and set aside the same order dated 23-3-1999 in respect of other occupants passed by the Assistant Collector, Vadodara passed in Case No. 362/98 and this Court directed to the Deputy

Collector and Settlement Commissioner to review the entire matter considering Circular dated 30-9-1992 issued by the State Government. Learned A.G.P. further submitted that the land in dispute was actually given to the respondent no. 6 and he committed breach of the conditions of the order, transferred the land to the respondent no. 9 who made illegal construction on the disputed land. As such, the petitioners were not the parties before the Managing Officer and Assistant Collector, Vadodara when the impugned order was passed. Learned counsel for the petitioner relied on the decision of this Court in the case of Gujarat State Civil Supplies Corporation Ltd. Vs. Regional Provident Fund Commissioner & Ors, reported in 1999 (1) G.L.H. 803, wherein it has been held, as under :

> "It cannot also be doubted that an order made in breach of principles of natural justice does not stand for that reason alone. The breach of principles of natural justice take place in many form. The order may not have been passed without affording an opportunity at all, the order may have been passed in violation of the fair procedure necessary for a fair adjudication, namely, where the accuser has acted as adjudicator or opportunity of cross-examination has not been granted, or opportunity of leading evidence has wrongly been denied or for that matter, no reasons have been recorded before passing the order adversely affecting a person. There are not the exhaustive circumstances in which breach of principles of natural justice are confirmed."

5. After considering the facts and circumstances of this case, it appears that the very order has been quashed and set aside by this Court and the authority concerned has already been directed to review its order in connection with the same circular issued by the State Government. While in the present case, the petitioners have already purchased the flats/shops constructed on the land in dispute, on the basis of the registered sale deed or the document agreement to sell. The petitioners are in occupation and possession of their respective flats/shops constructed on the land in dispute.

6. Learned Assistant Government Pleader could not point out that any notice was sent to the petitioners before passing the impugned order and no opportunity of being heard was afforded to the petitioners before passing the impugned order as the petitiones are affected

persons because of passing of the impugned order by the Managing Officer and Assistant Collector, Vadodara. The impugned order passed by the Managing Officer and Assistant Collector, Vadodara confiscating the land in dispute does not stand as it has been passed in violation of the principles of natural justice without affording an opportunity of being heard to the petitioners. Therefore, the impugned order deserves to be dismissed.

7. Accordingly, this petition is allowed and the impugned order dated 23-3-1999 passed by the Managing Officer and Assistant Collector, Vadodara at Annexure-G to the petition is hereby quashed and set aside. Rule is made absolute, with no order as to costs.

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/JVSatwara/